

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

NANCY STERLING and)	
RICHARD STERLING, wife and husband,)	
)	
Plaintiffs,)	
)	
v.)	Civil No. 2:15-cv-04283-MJW
)	
UNITED STATES OF AMERICA and)	
LAKE REGIONAL HEALTH SYSTEM,)	
)	
Defendants.)	

**STIPULATION FOR COMPROMISE SETTLEMENT
AGREEMENT AND RELEASE OF CLAIMS**

This Settlement Agreement and Release (hereinafter “Agreement”) is made, entered, and hereby stipulated by and between Defendant United States of America (“United States”), which includes, without limitation, the United States Department of Health and Human Services (“HHS”), Richland Medical Center, Inc., d/b/a Central Ozarks Medical Center Inc. (“Central Ozarks Medical Center”) and Robert C. Nielsen, D.O., by and through the United States Attorney for the Western District of Missouri, Defendant Lake Regional Health System, by and through its counsel, and the Plaintiffs Nancy Sterling and Richard Sterling (“Plaintiffs”), by and through their counsel.

WHEREAS, Plaintiffs claim that Nancy Sterling was subjected to alleged malpractice by a deemed employee of the United States and employees of Lake Regional Health System and claim to have suffered and continue to suffer physical and emotional injury, medical expenses, future medical expenses, and other damages as a result thereof; and

WHEREAS, to enforce their claims, the Sterlings instituted a lawsuit in the United States District Court for the Western District of Missouri, entitled *Nancy Sterling and Richard Sterling v. United States of America and Lake Regional Health System*, Case No. 2:15-cv-04283-MJW (“Action”); and

WHEREAS, the United States and Lake Regional Health System denied and continue to deny Plaintiffs’ allegations and Defendants deny any liability for damages to Plaintiffs under the Federal Tort Claims Act, 28 U.S.C. §§ 1346(d) and 2675 *et seq.* (“FTCA”) or Missouri law; and

WHEREAS, by reason of the foregoing, controversies have arisen or may arise between the parties with respect to the alleged liability of the United States and Lake Regional Health System for alleged medical malpractice and other torts, and the parties desire to settle and compromise all such claims and controversies which may exist between them, whether herein specified or not, including, but not limited to the claims herein addressed; and

NOW THEREFORE, it is hereby stipulated and agreed by and between Plaintiffs Nancy Sterling and Richard Sterling and the Defendants as follows:

1. The parties do hereby agree to settle and compromise each and every claim of any kind, whether known or unknown, arising directly or indirectly from the acts or omissions that gave rise to the Action under the terms and conditions set forth in this Agreement.

2. **Release.** Plaintiffs and their heirs, successors, or assigns, hereby fully and forever release, acquit, and discharge the United States, HHS, and its agents, employees, and former employees, either in their official or individual capacities (including, but not limited to, Central Ozarks Medical Center and Robert C. Nielsen, D.O.) and Lake Regional Health System and its agents, employees, and former employees of and from any and all claims, demands, or causes of action of any kind, or description, whether known or unknown, arising directly or indirectly from

any act, omission, or fault occurring before the date of this Agreement relating in any manner to the acts or omissions that gave rise to the Action; arising directly or indirectly from any act, omission, or fault occurring before the date of this Agreement in causing any injury to Plaintiffs; or arising directly or indirectly from any act, omission, or fault that was asserted or could have been asserted in the Action. This release shall apply to and preclude any action for wrongful death based upon any act, omission, or fault referred to in this paragraph.

3. **Payment.** The United States agrees to pay Plaintiffs the sum of One Hundred Twenty-five Thousand Dollars and zero Cents (\$125,000.00) (“Settlement Amount”), by electronic funds transfer to the trust account of counsel for Plaintiffs, and Plaintiffs agree to provide the information necessary for such a transfer to be accomplished to the United States. Plaintiffs’ counsel agrees to distribute the settlement proceeds among the Plaintiffs. Payment of the Settlement Amount shall be in full settlement and satisfaction of any and all claims, demands, and causes of action released in this Agreement.

4. **Timing of Payment.** It is further understood and agreed by the parties that upon execution of this Agreement the United States Attorney’s Office will promptly provide a copy of this Agreement to HHS, along with the completed payment forms. Once the documents are received, HHS will submit them to its Health Resources and Services Administration to issue payment in accordance with the terms of this Agreement, subject to the availability of appropriated funds pursuant to 42 U.S.C. § 233(k)(2). Plaintiffs understand and have been advised of this procedure, and Plaintiffs have also been advised that the receipt of funds will take at least several weeks from the date the payment request is submitted. Plaintiffs fully understand that neither the United States Attorney’s Office nor HHS has any control over the date or timing

of payment, other than to ensure prompt preparation and communication of the initial payment request.

5. **Hold Harmless and Indemnity.** Plaintiffs, on behalf of themselves, and their heirs, successors, or assigns, hereby hold harmless and indemnify the Defendants of and against: (a) any claim by Plaintiffs or Plaintiffs' heirs, executors, administrators, personal representatives, or assigns that is released as to Plaintiffs in this Agreement; (b) any claim for contribution, indemnity, or subrogation against the Defendants or their agents or employees arising from any act, omission, or fault to which this Agreement applies, which claim results from a claim or action by Plaintiffs (including through any heir, executor, administrator, personal representative, or assign thereof); and (c) any claim of any lienholder or other person who asserts that all or any part of the Settlement Amount should have been paid to such person because of an obligation of Plaintiffs to such person.

6. **Dismissal.** Upon completion of the execution of this Agreement the parties to the Action will file a stipulation of dismissal of the Action with prejudice.

7. **No Admission of Liability.** This Agreement is not, is in no way intended to be, and should not be construed as, an admission of liability or fault on the part of the Defendants, or any of their agents, servants, or employees. This Agreement is entered into by all parties for the purpose of compromising disputed claims under the Federal Tort Claims Act and Missouri law and avoiding the expenses and risks of further litigation. Furthermore, none of the terms of this Agreement may be offered or received in evidence or in any way referred to in any civil, criminal, or administrative action or proceeding other than proceedings that may be necessary to consummate or enforce this Agreement.

8. **No Representation Regarding Tax Consequences.** Plaintiffs acknowledge that neither the United States nor its attorneys have made any representations regarding the tax consequences of this Agreement, and that in entering into this Agreement, Plaintiffs have not relied on any representation of the United States or its attorneys except those representations herein.

9. **Public Disclosure.** The parties agree that this Agreement, including all of its terms and conditions and any additional agreements between Plaintiffs and the Defendants relating thereto, may be made public in their entirety, and Plaintiffs expressly consent to such release and disclosure pursuant to 5 U.S.C. § 552a(b).

10. **Attorney's Fees.** It is also understood by and among the parties that, pursuant to 28 U.S.C. § 2678, attorney's fees for services rendered in connection with the claims against the United States and this Agreement shall not exceed 25% of the Settlement Amount. The Defendants will not be liable to pay Plaintiffs or Plaintiffs' attorneys any sum separate from the Settlement Amount for any fees or expenses incurred.

11. **Costs and Fees.** It is also agreed, by and among the parties, that the respective parties will each bear their own costs, fees, and expenses and that any attorney's fees or costs owed by Plaintiffs will be paid out of the Settlement Amount and not in addition thereto. Each party will pay the charges of its own expert witnesses and any other costs incurred by that party.

12. **Counterparts.** It is also agreed, by and among the parties, that this Agreement may be executed in several counterparts, with a separate signature page for each Plaintiff. All such counterparts and signature pages, together, shall be deemed to be one document.

13. **Merger Clause.** This Agreement contains the entire agreement among Plaintiffs and the Defendants, and Plaintiffs acknowledge and agree that no promise or representation not

contained in this Agreement has been made to Plaintiffs, and further acknowledges and represents that this Agreement contains the entire understanding among the Plaintiffs and the United States, and contains all terms and conditions pertaining to the compromise and settlement of the disputes referenced herein. No statement, remark, agreement, or understanding, oral or written, that is not contained herein shall be recognized or enforced. This Agreement does not reflect any agreed-upon purpose other than the desire of the parties to reach a full and final conclusion of the Action and to resolve it without the time and expense of further litigation.

Executed this 20th day of July, 2016.

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/s/ Nancy Sterling
Plaintiff Nancy Sterling

State of Missouri)
) ss.
County of Cole)

On this 5 day of July, 2016, before me personally appeared Nancy Sterling, to me known to be the person who executed the foregoing instrument, and acknowledged that she executed the same as her free act and deed.

/s/ Ashlea Threlkeld
NOTARY PUBLIC

My Commission Expires: 12/10/18

(SEAL)

/s/ Richard Sterling
Plaintiff Richard Sterling

State of Missouri)
) ss.
County of Cole)

On this 29 day of June, 2016, before me personally appeared Richard Sterling, to me known to be the person who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

/s/ Ashlea Threlkeld
NOTARY PUBLIC

My Commission Expires: 12/10/18

(SEAL)

Agreement approved and fee and expense provisions agreed to:

DEPUTY AND MIZELL, L.L.C.

Date: 7/15/2016

By: /s/ Daniel C. Mizell
Daniel C. Mizell #46408
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ATTORNEY FOR PLAINTIFFS

NEWMAN, COMLEY & RUTH P.C.

Date: 7/20/2016

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Edward C. Clausen #34621
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ATTORNEYS FOR DEFENDANT
LAKE REGIONAL HEALTH SYSTEM

Tammy Dickinson
United States Attorney

Date: 7/20/2016

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